IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A.No.602 of 2016

State represented by
The Public Prosecutor,
High Court,
Madras-104
(Crime No.01/2001
of Cuddalore V & AC) .. Appellant

Vs.

1.S.Jayaprakash Narayanan
2.C.Veerasamy ..Respondents

PRAYER : Criminal Appeal has been filed under sections 378 of Criminal Procedure Code to allow the appeal and set aside the acquittal judgment dated 30.09.2015 in Special Case No.21 of 2014 on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Villupuram and convict the respondents/accused [A-1 & A-2] as charged.

For Appellant	:	Mr.S.Udaya Kumar Government Advocate (Crl.Side)
For Respondents	:	Mr.V.Arunagiri

JUDGMENT

This Criminal Appeal is preferred by the State, being aggrieved by the order of acquittal of A1 and A2 by the trial Court.

2. The accused A1 and A2 were tried for the offences under Sections 7, 12, 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act 1988 and Section 109 IPC & 201 IPC r/w 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act 1988 & Section 109 IPC respectively.

3. The case of the prosecution is that for giving “No Objection Certificate” to the defacto complainant, A1-Village Administrative Officer initially demanded Rs.500/-, then reduced to it Rs.400/-. Not interested to give bribe, the defacto complainant gave a complaint to the respondent police on 08.02.2001. After the demonstration of phenolphthalein Sodium Carbonate test to the official witnesses on the next day the Trap Laying Officer went to the house of A1 at 8.30 a.m., and asked the defacto complainant and the shadow witnesses to meet A1 and give the tainted money, if he demands. When they met A1 and offer money along with the

Application Form, A1 did not receive the money, but asked the defacto complainant to give the money and the Application Form to A2. So the defacto complainant, the shadow witnesses as well as the trap team were waiting out side the house of A1 till 1'0 clock for the arrival of A2. Meanwhile, one Chinnapaiyan, Village Assistant, came to the house of A1. The defacto complainant give the application form and money to the said Chinnapaiyan and asked him to fill up the Application Form. Chinnapaiyan, who received the money and Form, went to the house of A1 and after getting instructions from A1, he gave back the Form and the money to the defacto complainant.

4. It is a case of the prosecution that A1 scolded Chinnapaiyan for receiving money and Application Form, contrary to his instructions that it should be given to A2. Further case of the prosecution is that, at about 1.30 p.m., A2 came to the house of A1 and received the tainted money and Application Form. A2 who entered into the house of A1, came out immediately saying that he has an urgent work of remitting the tax collection. So the trap team as well as the defacto complainant and the shadow witnesses were waiting for A2 to return back to A1 house. When A2 returned back to A1 house, the trap laying officer entered into A1's house, searched and from A1, they recovered Rs.400/-, but the currency number did not tally with the currency number noted in the Entrustment Mahazar. However, on further enquiry with A2, they came to know that A2, who received the marked money of Rs.400/-, has gone to one jewellery shop by name “Shankar Jewellery” at Tirukoilur and gave the money to the jewellery shop for the due payable by him for the purchase of jewels a month ago. With these facts, the prosecution has completed the investigation and filed a final report. The trial Court framed charge under Sections 7 and 13(2) r/w.13(1)(d) of PC Act against A1 and under Section 201 IPC r/w Section 13(2) r/w 13(1)(d) of PC Act r/w.109 IPC against A2.

5. To prove the charges, the prosecution has examined 22 witnesses, marked 21 exhibits and 7 Material Objects. The trial Court after appreciating the evidence has acquitted the accused for want of proof. Being aggrieved, the State has preferred this appeal.

6. The learned Government Advocate (Crl.Side) for the State contended that the trial Court failed to properly appreciate the evidence and apply the presumption under Section 20 of the Prevention of Corruption Act. The tainted money recovered from the owners of the jewellery shop and they have deposed that the money was given by A2 towards due for purchase of jewels. The receipt for the purchase of jewels has also been marked. So, there is no reason for the trial Court to disbelieve the case of the prosecution that the tainted money recovered from the jewellery shop is the bribe amount demanded by A1 and received by A2 on the instructions of A1.

7. The learned counsel appearing for the respondents submitted that the case of the prosecution bristles with infirmity and improbability. While it is alleged that A1 demanded bribe to recommend the application of PW.2, no proof for demand . The tainted money was recovered from his possession. When A1 has not received the money, there is no reason for the trap laying officer to enter the house of A1 and search the premises and recovered the money from him, which is unconnected with the marked currency.

8. The intention of the prosecution is to fix A1 and A2. They claim that the tainted currency was recovered from Shankar jewellery. Thiyagarajan [PW.5] and Shankar Ganesh [PW.11], the owners of the Shankar jewellery from whom the alleged tainted currency recovered has not been subjected to phenolphthalein test to prove that they had handled the currency.

9. Hon'ble Supreme Court in *Dutta* case has laid that the demand of bribe must be proved, which is the fundamental fact for any case, for the prosecution under Section 7 of Prevention of Corruption Act, 1988. Likewise, the acceptance should be in connection with the demand. It is a case where admittedly the tainted currency was recovered from the owners of the jewellery shop, who were examined as PW.5 and PW.11. They are supposed to handle the tainted currency smeared with phenolphthalein, miserably the Trap Laying Officer has failed to conduct Phenolphthalein Sodium Carbonate test.

10. It is contended that the tainted currency was handled by Chinnapaiyan first, thereafter, by A2. Both are assistants of A1. It is the specific case of the prosecution and also evidence that A1 did not touch the money, inspite of money offered to him twice. As far as A2 is concerned except the positive report of phenolphthalein test, which is only a proof of handling the tainted currency, there is no allegations of demand by A2. Mere handling of the tainted money will not be sufficient to convict A2 for either abetting or for screening evidence for which he has been tried.

11. This Court, on perusing the evidence of PW.2 and the documents relied by the prosecution, is of the opinion that the view of the trial Court is possible and probable and therefore, there is no need to interfere with the judgment of acquittal rendered by the trial Court. Hence, this Criminal Appeal is dismissed.

02.06.2023

Internet : Yes/No
Index: Yes/No

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Dr.G.JAYACHANDRAN, J.

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To

1.The Special Judge, Special Court for Trial of Cases under Prevention of Corruption Act, Villupuram.

2.The Public Prosecutor,
High Court,
Madras-104.

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